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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-135196-17

Date:

May 14, 2018

Legend

Trust =

Trustee =

Trustor =

Granddaughter =

Foundation =

Court =

Order =

Date 1 =

Date 2 =

Dear :

This responses to your personal representative's letter of October 17, 2017, and supplemental correspondence, in which rulings are requested on the income, gift, and generation-skipping transfer (GST) tax consequences of a modification of Trust.

The facts and representations submitted are summarized as follows:

On Date 1, a date prior to September 25, 1985, Trustor established Trust, an irrevocable trust established for the benefit of Granddaughter and her descendants. Granddaughter has five living children and several living grandchildren.

Under the terms of Trust, Trustee is to distribute, on each income distribution date, 80 percent of the net income of Trust to Granddaughter during her lifetime. Upon Granddaughter's death, Trustee is to distribute this income among Granddaughter's children, with the descendants, if any, of a deceased child of Granddaughter to receive the deceased child's share *per stirpes*. If at the time of a payment neither Granddaughter nor any descendants of hers are living, Trustee is to distribute the income payment to the living descendants of Trustor, *per stirpes*. Trustee is to add the remaining 20 percent of the net income to the principal of the Trust estate. Trustee is also authorized to make discretionary distributions of principal to any income beneficiary.

Trust terminates twenty-one years after the death of the last to die of the descendants of Trustor living on Date 1. Upon termination, Trustee is to distribute the remaining principal to the then living descendants of Granddaughter in equal shares *per stirpes*, or if none, to the then living descendants of the Trustor in equal shares *per stirpes*, or if none, to Foundation, a charitable trust established by Trustor, or if such foundation is not then in existence, to such other non-profit charitable organizations as the Trustee in its absolute discretion shall determine.

On Date 2, after proper notice to all interested parties, Court issued Order in response to a petition filed by Trustee. Order provides that upon Granddaughter's death Trust shall be equally divided or partitioned into separate, independent trusts (resulting trusts) for the benefit of each living child of Granddaughter and for the benefit of each group comprised of the living descendants of a deceased child of Granddaughter *per stirpes*.

Each resulting trust will be funded with a pro-rata share of the assets of Trust, will terminate under the terms of Trust, and the income and principal of the resulting trusts will be distributed pursuant to the terms of the Trust agreement, except that distributions of income and principal from each resulting trust will be made to the descendants, if any, of Granddaughter for whom the resulting trust was formed, and if none, to the descendants of Granddaughter for whom the remaining resulting trusts were formed.

Trustee has represented that Trust was irrevocable prior to September 25, 1985, and that no additions, actual or constructive, have been made to Trust since that time.

Trustee has requested the following rulings:

1. The partition of Trust will not result in a transfer by any beneficiary of Trust that is subject to the gift tax under § 2501.
2. The separate trusts resulting from the partition of Trust will not be subject to the GST tax under § 2601.

3. The partition of Trust will not constitute a taxable disposition of the trust assets for purposes of § 1001.

Ruling No. 1:

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed a gift that is included in computing the amount of gifts made during the calendar year.

In the present case, the beneficial interests, rights, and expectancies of the beneficiaries will be substantially the same, both before and after the partition of Trust. Thus, we conclude that no transfer of property will be deemed to occur as a result of the partition.

Accordingly, based on the facts submitted and representations made, we conclude that the partition of Trust will not result in a transfer by any beneficiary of Trust that is subject to the gift tax under § 2501.

Ruling No. 2:

Section 2601 imposes a tax on every generation-skipping transfer, which is defined under § 2611 as a taxable distribution, a taxable termination and a direct skip.

Under § 1433(a) of the Tax Reform Act of 1986 (the Act) and § 26.2601-1(a) of the Generation-Skipping Tax Regulations, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, except to the extent the transfer is made out of corpus added to the trust by an actual or constructive addition after September 25, 1985.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601-1(b) will not cause the trust to lose its exempt status. These rules are applicable only for purposes of determining whether an exempt trust retains exempt status for generation-skipping tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument by judicial reformation, or nonjudicial reformation that is valid under applicable state law will not cause an exempt trust to be subject to the GST tax, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST or the creation of a new GST.

Section 26.2601-1(b)(4)(i)(E), Example 5, provides as follows. In 1980, Trustor established an irrevocable trust for the benefit of his two children, A and B, and their issue. Under the terms of the trust, the trustee has the discretion to distribute income and principal to A, B, and their issue in such amounts as the trustee deems appropriate. On the death of the last to die of A and B, the trust principal is to be distributed to the living issue of A and B, *per stirpes*. In 2002, the appropriate local court approved the division of the trust into two equal trusts, one for the benefit of A and A's issue and one for the benefit of B and B's issue. The trust for A and A's issue provides that the trustee has the discretion to distribute trust income and principal to A and A's issue in such amounts as the trustee deems appropriate. On A's death, the trust principal is to be distributed equally to A's issue, *per stirpes*. If A dies with no living descendants, the principal will be added to the trust for B and B's issue. The trust for B and B's issue is identical (except for the beneficiaries), and terminates at B's death at which time the trust principal is to be distributed equally to B's issue, *per stirpes*. If B dies with no living descendants, principal will be added to the trust for A and A's issue. The division of the trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the division. In addition, the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

In the present case, Trust was irrevocable on September 25, 1985. It is represented that no additions, actual or constructive, have been made to Trust after that date.

The partition of Trust on the death of Granddaughter is similar to the change described in § 26.2601-1(b)(4)(i)(E), Example 5. The partition will not shift any beneficial interest in Trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the partition or extend the time for vesting of any beneficial interest in Trust beyond the period provided for in the original trust.

Accordingly, based on the facts submitted and representations made, we conclude that the separate trusts resulting from the partition of Trust will not be subject to GST tax under § 2601.

Ruling No. 3:

Section 61(a)(3) provides that gross income includes gains derived from dealings in property, and § 61(a)(15) provides that gross income includes income from an interest in a trust.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) states that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss, determined under § 1001, on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained.

An exchange of property results in the realization of gain or loss under § 1001 if the properties exchanged are materially different. There is a material difference when the exchanged properties embody legal entitlements different in kind or extent or when they confer different rights and powers. *Cottage Savings Association v. Commissioner*, 499 U.S. 554, 565 (1991).

A pro rata partition of jointly owned property is not a sale or other disposition of property if the co-owners of the joint property sever their joint interests but do not acquire a new or additional interest as a result. Thus, neither gain nor loss is realized on such a partition. Rev. Rul. 56-437, 1956-2 C.B. 507.

In this case, upon the death of Granddaughter, the assets of the Trust will be distributed on a pro rata basis among the resulting trusts. The legal entitlements, as well as the rights and powers, of the income beneficiaries and the remainder beneficiaries will remain the same in kind and extent after the partition of the Trust. Thus, there will be no material difference in the positions of the beneficiaries of the Trust after the partition of the Trust into separate trusts upon the death of Granddaughter.

Accordingly, based on the facts submitted and representations made, we conclude that the partition of the Trust will not constitute a taxable disposition of the trust assets for purposes of § 1001.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for 6110 purposes

cc: